

**RULES
OF THE
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTION**

**CHAPTER 0180-17
RULES PERTAINING TO MORTGAGE LENDING,
LOAN SERVICING AND LOAN BROKERING**

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0180-17-.01. DEFINITIONS.

As used herein:

- (1) “Brokerage fee” means any fee paid by or charged to a loan applicant for loan origination charged by a broker or lender when no part of such fee is for service rendered by a third party provider. For the purpose of this rule, brokerage fee is synonymous with finder fee.
- (2) The term “Commitment” means a written offer to make a mortgage loan signed by a mortgage lender, or by an employee authorized to sign such instruments, on behalf of a mortgage lender.
- (3) The term “commitment agreement” means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant’s signature thereon.
- (4) The term “fees paid to third persons” means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker or paid by the applicant to or retained by the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited to, mail service charges, tax service charges, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.
- (5) The term “commitment fee” means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of the commitment or as a requirement for acceptance by the applicant of a commitment, but the term does not include interest or fees paid to third persons.
- (6)
 - (a) The term “lock-in agreement” means a written agreement between a mortgage lender and an applicant for a mortgage loan which establishes and sets an interest rate and the discount points and lock-in fees to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval.
 - (b) A “commitment agreement” which establishes and sets an interest rate and the discount points and commitment fees to be charged in connection with a mortgage loan that is also closed within the time period specified in the agreement is a lock-in agreement.

(Rule 0180-17-.01, continued)

- (7) The term “lock-in fee” means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement, but the term does not include interest or fees paid to third persons.
- (8) The term “discount points” means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan. The term “discount points” shall not include interest, origination fees or any fees paid to third persons.
- (9) Unless otherwise provided, all other terms used herein shall have the meaning ascribed to them in Chapter 846 of the Public Acts of 1988.

Authority: T.C.A. § 45-13-117. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.02. ACCOUNTING FOR FEES TO THIRD PERSONS.

All moneys received by a licensee or registrant from an applicant for fees paid to third persons shall be accounted for separately, (such as by use of the HUD-1 Settlement Statement), and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid.

Authority: T.C.A. §§ 45-13-109 and 45-13-117. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.03. NOTICE OF MORTGAGE TRANSFER. A transferor of servicing rights under a mortgage loan shall give the mortgagor under such loan written notice of such transfer of servicing rights. The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least ten (10) calendar days before the first payment affected by the notice is due. The mortgagor under such loan shall be entitled to continue to make payments to the transferor of the servicing rights until such mortgagor is given the notice specified herein, and neither the transferor nor the transferee of such servicing rights shall be entitled to enforce any penalties for late payment or non-payment against such mortgagor based on such continuation.

Authority: T.C.A. § 45-13-117. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.04. LOCK-IN AGREEMENT.

- (1) A lock-in agreement shall include, but not necessarily be limited to, the following:
 - (a) The interest rate and discount points to be paid by the borrower on the mortgage loan, and if the loan is an adjustable rate, the initial interest rate;
 - (b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;
 - (c) The length of the lock-in period;
 - (d) A statement that if the loan is not closed within the lock-in period, the mortgage lender is no longer obligated by the lock-in agreement and that any lock-in fee paid by the applicant may not be refundable except under certain conditions (the conditions do not have to be specified);
 - (e) A statement that any terms not locked-in by the lock-in agreement are subject to change until the loan is closed at settlement; and
 - (f) Any other terms and conditions of the lock-in agreement required by the lender.

Authority: T.C.A. §§ 45-13-109 and 45-13-117. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.05. REFUND OF LOCK-IN FEE.

Any failure by a licensee or a registrant to return a lock-in fee to an applicant pursuant to the terms of its agreement with such applicant shall constitute grounds to revoke the license or registration of such licensee or registrant.

Authority: T.C.A. §§ 45-13-108, 45-13-109 and 45-13-117. *Administrative History:* Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.06. REFUND OF COMMITMENT FEE.

Any failure by a licensee or a registrant to return a commitment fee to an applicant pursuant to the terms of its agreement with such applicant shall constitute grounds to revoke the license or registration of such licensee or registrant.

Authority: T.C.A. §§ 45-13-108, 45-13-109 and 45-13-117. *Administrative History:* Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.07. BROKERAGE/FINDER FEES.

- (1) Any licensee or registrant under the Act who charges or pays a brokerage/finder fee must provide a schedule of fees paid or charged in their filing papers and cannot alter those charges without thirty (30) days prior written notice to the Department of Financial Institutions.
- (2) Any brokerage/finder fee of two percent (2%) or less of the principal amount of the loan will be considered fair and reasonable. Any brokerage/finder fee of two percent (2%) or more of the principal amount of the loan will be presumed to be unfair and unreasonable and shall be grounds to revoke the license or registration of such licensee or registrant, unless such licensee or registrant can provide evidence showing that such fee constitutes fair and reasonable compensation, subject to the restrictions contained in T.C.A. § 47-14-101, et seq.

Authority: T.C.A. §§ 45-13-105, 45-13-108, 45-13-117 and 47-14-113 (3). *Administrative History:* Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.08. SURETY BOND/LETTER OF CREDIT.

- (1) The surety required by T.C.A. § 45-13-106 may be in the form of a bond issued by any bonding company qualified to do business in Tennessee. The bond shall be issued for the calendar year and must provide coverage for legal action against the licensee for the following two (2) years.
- (2) If a letter of credit is filed with the Commissioner rather than a surety bond, the letter of credit must be issued for a period of three (3) years to provide coverage for any legal action brought against the licensee within that three (3) year period. A letter of credit shall be renewed annually to reflect three (3) years of coverage.

Authority: T.C.A. § 45-13-106. *Administrative History:* Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.09. LETTER OF EXEMPTION.

The Department may issue a letter of exemption to any entity or person that provides the Department with sufficient written evidence of exemption, signed by an authorized legal or corporate representative.

Authority: T.C.A. § 45-13-103. *Administrative History:* Original rule filed January 25, 1989; effective May 1, 1989.

0180-17-.10. REGISTRATION FEE FOR FILING A REGISTRATION STATEMENT.

- (1) Each registrant filing a registration statement pursuant to T.C.A. § 45-13-103(b)(1), shall pay to the commissioner, at the time of filing such registration statement, a non-refundable registration fee of one hundred dollars (\$100) and a non-refundable investigation fee of one hundred dollars (\$100). Each registrant shall file a renewal application and pay a renewal fee of one hundred dollars (\$100) to the

(Rule 0180-17-.10, continued)

commissioner on or before December 10 of each year for the following year's registration commencing on January 1. Should the registrant fail to file the renewal application and renewal fee by December 10, the registrant will have to file an application for registration together with the one hundred dollar (\$100) registration fee and the one hundred dollar (\$100) investigation fee to obtain the renewed registration.

Authority: T.C.A. §§ 45-13-117 and 45-1-107(h). **Administrative History:** Original rule filed July 26, 1996; effective November 28, 1996.